SBCivil Writ Petition No.3273/2006

Mohanlal Meena
Vs.
District & Sessions Judge, Sirohi

Date of Order :: 1st August, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sandeep Shah, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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While holding the post of Class-IV employee in District Judgeship Sirohi the petitioner submitted an application dated 8.3.2006 under Rule 50 of the Rajasthan Civil Services (Pension) Rules, 1996 (hereinafter referred to as “the Rules of 1996”) seeking voluntary retirement from service w.e.f. 1.6.2006 for the reason that mother of the petitioner was continuously ill and it was necessary for him to look after her. The application dated 8.3.2006 was accepted by the District Judge, Sirohi by an order dated 9.3.2006 effecting retirement of the petitioner w.e.f. 1.6.2006.

The petitioner, on 27.5.2006, prior to coming into force of his retirement submitted an application to the District Judge, Sirohi withdrawing the application dated 8.3.2006. The petitioner while withdrawing the application for voluntary retirement specifically stated that his elder brother is now ready and willing to keep their mother with him and

also ready to serve her, therefore, there is no need of seeking voluntary retirement. The District Judge, Sirohi by order dated 31.5.2006 rejected the application submitted by the petitioner for withdrawal of voluntary retirement and maintained the order dated 9.3.2006, hence this petition for writ is preferred.

A reply to the writ petition is filed on behalf of the respondents pointing out that the petitioner is a habitual absentee and in view of the fact that the petitioner himself submitted an application for seeking voluntary retirement, no just and valid reason is available with him to withdraw the same.

Heard counsel for the parties.

The petitioner sought voluntary retirement w.e.f. 1.6.2006 by application dated 8.3.2006. While seeking voluntary retirement a specific reason was given by the petitioner that his mother is continuously ill and it was necessary for him to stay with her. The petitioner before coming into force of his retirement withdrew the application dated 8.3.2006. While withdrawing the application dated 8.3.2006 the petitioner gave a specific reason that his elder brother is now ready to keep their mother with him and is also willing to serve her sufficiently. The District Judge, Sirohi by order

dated 31.5.2006 rejected the application of the petitioner merely by saying that request made by the petitioner for withdrawal of application dated 8.3.2006 is not in interest of state. The right to withdraw an application for withdrawal before coming into force of the retirement is prescribed under Rule 50(4) of the Rules of 1996 itself. It is well settled that request for voluntary retirement in spite of its acceptance can be withdrawn before effective date.

Division Bench of this Court in the case of State of Rajasthan & Ors. v. Achlaram, reported in 2005(1) WLC (Raj.) 796, while considering the similar issue held as under:-

> "13.-The argument raised by the counsel for appellants does not hold good in the light of Rule 50 sub-rule(2) read with sub-rule(4) of the Rujles of 1996. Sub-rule(2) & (4) of Rule 50 of the Rules of 1996, if read together, clearly indicate that such employee, who has completed 20 years in service, may after giving at least three months' previous notice in writing to the appointing authoriy, which requires aceptance by the competent authority and if the authority does not refuse to grant permission for retirement before the expiry of the period specified in the notice, the retirement automatically becomes effective from the date of expiry of the said period and correspondoingly under sub-rule(4) of the Govt. Servant who elects to retire can

> withdraw his application seeking voluntary retirement before the intended date of his retirement as referred to by him in his application. In such a situation, the very submission made by the learned counsel for the appellants is devoid of any merit. We are also in agreement with the finding recorded by the learned Single Judge and which does not call for any interference by this Court."

In view of whatever stated above, I am is of the view that the District Judge, Sirohi erred while rejecting the application submitted by the petitioner for withdrawal of application dated 8.3.2006. There is no just and valid reason for not accepting the application dated 27.5.2006 submitted by the petitioner before coming into effect of his retirement.

Accordingly, this petition for writ is allowed. The order dated 9.3.2006 is quashed and the respondents are directed to reinstate the petitioner as a Class-IV employee. The petitioner shall be treated in continuous service of the respondents. However, he shall not be entitled for payment of wages for the period he remained out of employment.

(GOVIND MATHUR),J.

kkm/ps.